

EXECUTIVE SUMMARY

TO: Bob Vitas, City Manager

FROM: Mark Z. Finigan, Assistant City Manager - Administration

DATE: January 8, 2013

SUBJECT: 2500 Patterson Avenue
Acceptance of Mitigated Amount
Release of Lien

Action statement:

Recommend the City Commission accept the proposed mitigated amount of \$10,000 of accrued fines totaling \$927,050 (as of January 7, 2013) for the property located at 2500 Patterson Avenue. Additionally, request City of Key West Commission release the lien placed by the City of Key West on the subject property pursuant to City of Key West Code of Ordinances Sec 2.635 and FL Statute 162.09 (to place the lien) and Sec. 2-646 (to remove lien).

Commission approval of the mitigated amount is subject to a closing on the property in which the terms of the sale, as described in the background section of this Executive Summary as well as supporting documentation provided, do not substantially change and the prospective seller/owner does not receive any proceeds from closing. Additionally, the closing must also include a disbursement which pays in full all outstanding City of Key West utility charges.

Background:

The original mortgage for 2500 Patterson Avenue recorded in April of 2002 was for \$336,000. In May of 2006 a new mortgage was recorded in the amount of \$752,500 and a Full Satisfaction & Release of Collateral was recorded for the original mortgage on June 21, 2006. Also in May of 2006, a line of credit in the amount of \$102,125 was recorded. The current estimated deficiency as represented by Bank of America is \$899,831.49, when including accrued interest, legal fees and other foreclosure costs. The property is under a cash contract for \$285,000 as evidenced by the attached Sale and Purchase Agreement.

The code violation and subsequent Findings and Order centered on the existence and rental of four units when the City only recognizes two. Building permits, business tax receipt and certificate of occupancy were not obtained for the additional two units.

The Owner achieved compliance on January 7, 2013 by removing two kitchens. The Affidavit of Compliance is made part of the Legistar file. You will note that compliance is considered “partial” until such time action is taken by the City with respect to mitigation of fines. However, compliance has been achieved as it relates to the underlying violation.

The sewer/solid waste/storm water account has not been paid since October of 2008. Total due, as of January 1, 2013 for outstanding utility service charges is as follows:

The total amount due is \$9,472.83

\$8,262.18	Services
\$1,190.65	Penalties
\$ 20.00	Lien Fees

The recommended mitigated amount of \$10,000 will recover Staff / Magistrate time and filing costs through the Findings and Order as well as cover Staff time to process the release of the lien. The owner also understands and agrees the outstanding utility charges would have to be satisfied through buyer or bank funds upon the sale.

Recommendation:

The City Manager recommends the City Commission accept the proposed mitigated amount of \$10,000 of accrued fines totaling \$923,450 for the property located at 2500 Patterson Avenue. Although the City does have a lien in place, it post dates the Lis Pendens that was filed as a result of a looming foreclosure action. However, even if the City had timely filed its lien prior to the Lis Pendens, the City would still be in a far inferior position compared to the first mortgage holder when one compares the sale price and the outstanding mortgage balance. If this property were to foreclose, the City would not be in a legitimate position to appreciate a recovery of any of the fines either legally or practically speaking given the significant negative equity that is involved with this property.